IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3758 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANGALBHAI FULABHAI BIN MATHURBHAI

Versus

HEIRS OF SOMABHAI S PATEL

Appearance:

MR NS DESAI for Petitioners

Ms TK PATEL for Respondents

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 16/02/2001

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the petitioners have challenged the judgment and order dated 23.9.1984 passed by the Gujarat Revenue Tribunal in revision application No. TEN.BA.570/84 and the subsequent order dated 14.2.1991 passed by the same Tribunal rejecting the petitioners'

review application.

2. On 9.11.1976, Mangalbhai Fulabhai @ Mathurbhai filed an application under Section 32(1B) of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as "the Act") contending that he was in possession of the land on the appointed date i.e. 15.6.1955 and that on account of his being dispossessed from such land by the original-landlord before the specified date i.e. 3.3.1973, otherwise than in the manner provided in Section 29 of the Act and that the land was not put to non-agricultural use and, therefore, the Mamlatdar should direct that the possession of the land shall be taken away from the respondents and restore to the petitioner-tenant and that it may be declared that the petitioner had purchased such land. The Mamlatdar, after hearing the parties, held by his order dated 23.10.1977 that Mangalbhai Fulabhai @ Mathurbhai had surrendered his tenancy rights as far back as on 27.5.1952 and that he had voluntarily handed over possession of the land in favour of the landlord. It was further held that the mutation entry regarding surrender was recorded vide entry No. 2529 on 15.1.1953 in the village revenue record. The Mamlatdar also gave a finding that the possession of the landlord was shown in the revenue record since 1955-56 and there was no evidence to show that the applicant had cultivated the land in question thereafter. Accordingly, the Mamlatdar & ALT, Anand by the aforesaid order dated 23.10.1977 dropped the proceedings and rejected the application dated 9.11.1976 by applicant Mangalbhai.

Six years thereafter, Mangalbhai and his two sisters, Maniben and Raiben, filed appeal No. 6096/83 before the Deputy Collector (Land Reforms), Kheda under Section 74 of the Act. Before the Deputy Collector, the respondents opposed the appeal and also raised an objection on the ground of limitation. The Deputy Collector, however, set aside the order of the Mamlatdar & ALT and remanded the matter only on the ground that all the heirs of the landlord and the tenant were not joined as parties to the proceedings before the Mamlatdar.

The said order dated 31.3.1984 thereupon came to be challenged by the respondent herein i.e. the heirs of deceased landlord Somabhai Shanabhai Patel. After hearing the learned counsel for the parties, the Tribunal by its impugned judgment dated 23.9.1984 allowed the revision application and held that entry No. 2529 dated 15.1.1953 recording that the tenant had surrendered the tenancy rights was never challenged and that when the

Mamlatdar had passed the order recording the aforesaid facts after giving an opportunity of hearing to all the parties who were before the Mamlatdar, no fault can be found with the order. Accordingly, the order of remand passed by the Deputy Collector was set aside.

It appears that three years thereafter Mangalbhai Fulabhai and his sisters filed a review application bearing No. TEN.CA 33/87 before the Tribunal on various grounds. The review application came to be dismissed on 14.2.1981. It is against the aforesaid orders of the Tribunal that the petitioners have filed this petition.

3. At the hearing of this petition, Mr NS Desai, learned counsel for the petitioners has submitted that the Tribunal ought not to have interfered with the order of the Deputy Collector which was merely an order of remand as no rights of the parties were finally determined by the Deputy Collector's order and, therefore, the Tribunal ought not to have interfered with the same in revision.

Secondly, it is submitted that the order of the Mamlatdar & ALT as well as the judgment of the Tribunal are based on an entry made in the year 1953 on the basis of order dated 27.5.1952 passed by an Extra Aval Clerk, Anand in the proceedings which ought to have been instituted in the Court of the Mamlatdar & ALT and not before the Court of an Extra Aval Clerk, Anand. Strong reliance has been placed on the provisions of Section 15 of the Act in support of his contention that if the surrender of tenancy rights or handing over possession of the land is not in accordance with the said provisions, the so called surrender did not have any effect in the eye of law and it amounted to dispossession of the original tenant in the year 1952 without following the prescribed procedure of law.

4. In reply, Ms TK Patel, learned counsel for the respondents has opposed the petition, inter alia, on the following grounds :-

(i) The Tribunal had rightly set aside the order of the Deputy Collector who had entertained the appeal after more than six years as against the prescribed period of limitation of 60 days as per Section 67 of the Act. The petitioners herein, appellants before the Deputy Collector, had not made any application for condonation of delay and inspite of strong objection raised on behalf of the respondents herein on the ground of

limitation, the Deputy Collector did not give any finding on the said issue and set aside the order of the Mamlatdar & ALT which was in favour of the present respondents (owners of the land).

(ii) Mangalbhai Fulabhai had filed an application on 9.11.1976 under Section 32(1B) of the Act beyond the prescribed period of limitation by one year. The specified date as per the provisions of Section 32(1B) was 3.3.1973 and, therefore, if at all Mangalbhai Fulabhai was entitled to file an application under the said provisions, he ought to have filed it by 3.3.1974. Therefore also, the application was grossly time barred. The Mamlatdar could have even rejected the same on the ground of limitation without giving any finding on merits.

(iii) When the Deputy Collector gave a finding that the proceedings initiated by the Mamlatdar & ALT pursuant to the application dated 9.11.1976 of Mangalbhai Fulabhai could be treated as suo motu proceedings, once the Mamlatdar decided to drop the proceedings by his order dated 23.10.1777, Mangalbhai Fulabhai could not be treated as an aggrieved party. In support of the said contention, reliance has been placed on the decision dated 9/11.3.1982 rendered by this Court (Coram : Hon'ble Mr Justice S.B. Majmudar, as His Lordship then was) in Special Civil Application No. 4222 of 1981 as reported in (1982) Vol. 22 Gujarat Revenue Tribunal Law Reporter Pg. 75.

(iv) The conditions stipulated by Section 32(1B) were not fulfilled because in the first place, the applicant had failed to show that he was in possession of the land in question on the appointed date i.e. 15.6.1955 and further that he had been dispossessed. The voluntary surrender of the land by a tenant does not amount to dispossession as held by the Apex Court in Dhondiram Tatoba Kadam vs. Ramchandra Balwantrao Dubal, (1995) 1 GLR GLR 344.

(v) Lastly, it is contended that in any view of the matter, when the Mamlatdar as well as the Tribunal have given a finding of fact that the land in question question was surrendered by the tenant to the landlords, such a finding does not warrant any interference at the hands of this

Court in a petition under Article 227 of the Constitution.

5. Having heard the learned counsel for the parties, it appears to the Court that in view of the findings given by the Mamlatdar & ALT as well as the Tribunal that original tenant Fulabhai had surrendered his tenancy rights as recorded in the order dated 27.5.1952 and which order was reflected in revenue entry No. 2529 as far back as on 15.1.1953, it cannot be said that Fulabhai was dispossessed from the land in question. Whether such dispossession was in accordance with law or not would not be relevant once it is found to be voluntary as held by the Apex Court in Dhondiram Tatoba Kadam (Supra) and also it would not be dispossession within the meaning of Section 32(1B) of the Act. It is pertinent to note that even though Fulabhai Mathurbhai's name did not continue in the revenue record after the year 1954-55, for a period of more than 20 years no objection was raised either by Fulabhai Mathurbhai or the petitioners who are the heirs of Fulabhai for challenging the aforesaid order or the consequential entry made in the revenue record as far back as in the year 1953. Further, the order of the Mamlatdar passed in the year 1977 was also not challenged before the Deputy Collector till the year 1983. The cumulative effect of all these facts strengthens the finding given by the Mamlatdar and confirmed by the Tribunal that surrender of the land in question by the original tenant was voluntary. Once this finding is arrived at, in view of the aforesaid settled legal position, no further inquiry is required to be made whether or not such voluntary surrender was in accordance with the provisions of Section 15 of the Bombay Tenancy and Agricultural Lands Act, 1948 which is the main contention urged on behalf of the petitioners.

6. In view of the aforesaid findings, it is not necessary to consider the other contentions raised on behalf of the rival parties.

7. In view of the above discussion, the petition is dismissed. Rule is discharged with no order as to costs.

(M.S. Shah, J.)

sundar/-